

STATE OF MICHIGAN  
COURT OF APPEALS

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NORMA GRIWATSCH,

Plaintiff-Appellant,

v

PAUL NIEDZWIECKI,

Defendant-Appellee.

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UNPUBLISHED  
February 14, 2003

No. 237456  
Presque Isle Circuit Court  
LC No. 01-002448-CH

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant’s motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1978 Agnes Haske gave her daughter, Edith Niedzwiecki, a power of attorney authorizing her to sell, mortgage, rent, and manage all lands and real estate Haske owned. In 1992 Edith used the power of attorney to execute a deed for farm property, naming herself, Haske, and defendant as joint tenants. Edith died in 1995, and Haske died in 1999. Defendant, as conservator, filed a final account and discharge for the estate, which was not contested.

Plaintiff filed an action in probate court, alleging that Agnes Haske was incompetent when she executed the power of attorney in 1978, and seeking a one-sixth interest in the land under the law of intestate succession. The probate court dismissed the action for lack of jurisdiction, lack of joinder, and untimeliness. Plaintiff filed this identical action in circuit court, which was also dismissed.

Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those essential to a prior action. *Sewell v Clean Cut Management, Inc.*, 463 Mich 569, 575; 621 NW2d 222 (2001). Res judicata requires that: (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second case was or could have been resolved in the first; and (4) both actions involved the same parties or their privies. *Kosiel v Arrow Liquors Corp.*, 446 Mich 374, 379; 521 NW2d 531 (1994).

Plaintiff raised the same issues in her prior probate court action. The circuit court properly dismissed this action.

Affirmed.

/s/ Peter D. O'Connell  
/s/ E. Thomas Fitzgerald  
/s/ Christopher M. Murray